

SENATE BILL NO. 446

INTRODUCED BY B. DEPRATU, SLITER, BRUEGGEMAN, CURTISS, DAVIES, EKEGREN, ELLIS,
FISHER, GRIMES, HEDGES, JACKSON, KASTEN, KEENAN, KITZENBERG, LAIBLE, LAWSON, MOHL,
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A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE PUBLIC SERVICE COMMISSION TO REVIEW
AN AGREEMENT BY A RURAL ELECTRIC COOPERATIVE TO PURCHASE OR OTHERWISE ACQUIRE A
PUBLIC UTILITY'S ELECTRIC SERVICE FACILITIES AND SERVICE TERRITORY; EXEMPTING RURAL
ELECTRIC COOPERATIVES THAT PURCHASE OR OTHERWISE ACQUIRE A PUBLIC UTILITY'S ELECTRIC
SERVICE FACILITIES AND SERVICE TERRITORY FROM CERTAIN PROVISIONS OF THE ELECTRIC
COOPERATIVE ENABLING LAWS; AMENDING SECTIONS 35-18-102, 35-18-105, AND 35-18-106, MCA;
AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Rural electric cooperative purchase of investor-owned utility property

-- exemption. (1) The commission shall review an agreement by a rural electric cooperative organized under
Title 35, chapter 18, to purchase or otherwise acquire a public utility's electric service facilities and service
territory.

(2) If the commission determines after its review in subsection (1) that the rural electric
cooperative's purchase or acquisition of a public utility's electric service facilities and service territory is
in the public interest, the rural electric cooperative is exempt from 35-18-102(6), 35-18-105, or
35-18-106 to the extent necessary for the rural cooperative to provide service to customers in the
acquired service territory.

(3) THE COMMISSION MAY ENFORCE ALL REPRESENTATIONS OF THE PARTIES UPON WHICH THE COMMISSION
RELIED IN APPROVING THE PURCHASE AND MAY ENFORCE ALL CONDITIONS PLACED UPON THE PURCHASE BY THE
COMMISSION IN ITS ORDER DETERMINING THAT THE PURCHASE IS IN THE PUBLIC INTEREST.

~~(3)(4)~~ This section does not give the commission the authority to regulate a rural electric
cooperative in any manner other than ~~review of the agreement~~ AS PROVIDED in ~~subsection~~ SUBSECTIONS (1)
AND (3).

1

2 **Section 2.** Section 35-18-102, MCA, is amended to read:

3 **"35-18-102. Definitions.** ~~(1) Corporations organized under this chapter and corporations which~~
4 ~~become subject to this chapter in the manner hereinafter provided are hereinafter referred to as~~
5 ~~"cooperatives".~~

6 ~~———(2)~~ In this chapter, unless the context otherwise requires, the following definitions apply:

7 (1) "Broadband" means transmission facilities capable of handling frequencies greater than those
8 required for high grade voice communication (higher than 4 kilohertz).

9 ~~(a)(2)~~ "Cable television system" means a system that receives and amplifies the signals broadcast
10 by one or more television stations and redistributes the signals to subscribing members of the public for
11 a fixed or periodic fee by wire, cable, microwave, or other means, whether ~~such~~ the means are owned or
12 leased.

13 ~~(b) "Broadband" means transmission facilities capable of handling frequencies greater than those~~
14 ~~required for high grade voice communication (higher than 4 kilohertz).~~

15 (3) "Cooperative" means a corporation organized under this chapter or a corporation that becomes
16 subject to the provisions of this chapter.

17 ~~(c)(4)~~ "Member" means each incorporator of a cooperative and each person admitted to and
18 retaining membership ~~therein and shall include a husband and wife~~ in a cooperative as provided by the
19 articles of incorporation or bylaws of the cooperative including persons admitted to joint membership.

20 ~~(d)(5)~~ "Person" includes any natural person, firm, association, corporation, business trust,
21 partnership, federal agency, state or political subdivision or an agency thereof of a state or political
22 subdivision, or any body politic other organization or group of persons.

23 ~~(e)(6)~~ "Rural area", except as provided in [section 1], as applied to all corporations organized under
24 the provisions of 35-18-105(1), means:

25 (a) any an area not included within the boundaries of ~~any an~~ an incorporated or unincorporated city,
26 town, village, or borough having a population in excess of 3,500 persons on March 17, 1939, or
27 subsequent ~~thereto,~~ to March 17, 1939; and

28 (b) every an incorporated municipality in which 95% or more of the premises are served by an
29 electric cooperative on February 1, 1971."

30

1 **Section 3.** Section 35-18-105, MCA, is amended to read:

2 **"35-18-105. Permissible purposes for incorporation.** Cooperative nonprofit membership
3 corporations may be organized under this chapter:

4 (1) except as provided in [section 1], for the purpose of supplying electric energy and promoting
5 and extending the use of electric energy in rural areas, as provided in this chapter;

6 (2) for the purposes of making generally available adequate telephone service, cable television
7 service, or broadband facilities through the improvement and expansion of existing telephone, cable
8 television, or broadband facilities and the construction and operation of additional facilities as are required
9 to ~~assure~~ ensure the availability of service to the widest practicable number of users of telephone service,
10 cable television service, or broadband facilities; and

11 (3) for purposes allowable under federal authorization, including rural economic development
12 activities."

13
14 **Section 4.** Section 35-18-106, MCA, is amended to read:

15 **"35-18-106. Powers of cooperatives.** A cooperative ~~has power to~~ may:

16 (1) sue and be sued in its corporate name;

17 (2) have perpetual existence;

18 (3) adopt a corporate seal and alter the ~~same at pleasure~~ corporate seal;

19 (4) become a member in one or more other cooperatives or corporations or ~~to~~ own stock in other
20 cooperatives or corporations;

21 (5) construct, purchase, take, receive, lease as lessee, or otherwise acquire and ~~to~~ own, hold, use,
22 equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage,
23 pledge, or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric
24 generating plants, electric refrigeration plants, telephone lines, facilities or systems (but not telegraph or
25 radio broadcasting services or facilities) as defined by law, ~~lands~~ land, buildings, structures, dams, plants
26 and equipment, and all kinds or classes of real or personal property, ~~which that~~ that may be considered
27 necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

28 (6) purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer,
29 convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges,
30 licenses, rights-of-way, and easements;

(7) borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness debt and secure the payment of indebtedness by mortgage, pledge, deed of trust, or any other encumbrance upon all of its ~~then-owned~~ then-owned or after-acquired real or personal property, assets, franchises, revenues, or income;

(8) construct, maintain, and operate electric transmission and distribution lines or telephone, cable television, or broadband lines, facilities, or systems along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges, and causeways and upon, under, and across all publicly owned lands, subject, however, to the same requirements in respect of the use of the thoroughfares and lands ~~as~~ that are imposed by the respective authorities having jurisdiction of them upon corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(9) exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(10) conduct its business and exercise all of its powers within or ~~without~~ outside this state;

(11) adopt, amend, and repeal bylaws;

(12) in the case of corporations organized under the provisions of 35-18-105(1) and except as provided in [section 1]:

(a) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy and distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members;

(b) make ~~loans to persons~~ a loan to a person to whom electric energy is or will be supplied by the cooperative for the purpose of and otherwise to assist ~~those persons~~ that person in wiring ~~their~~ the person's premises and installing in ~~their~~ the person's premises electrical and plumbing fixtures, appliances, apparatus, and equipment of all kinds and character and, in connection with electrical and plumbing fixtures, purchase, acquire, lease, sell, distribute, install, and repair the electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other ~~evidences of indebtedness~~ debt and all types of security for electrical and plumbing fixtures;

(c) make ~~loans to persons~~ a loan to a person to whom electric energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist ~~those persons~~ that person in constructing, maintaining, and operating electric refrigeration plants;

(13) in the case of corporations organized under the provisions of 35-18-105(2):

(a) improve and expand existing telephone lines, facilities, and systems and construct, acquire, operate, and furnish additional telephone lines, facilities, and systems as are required to ~~assure~~ ensure the availability of adequate telephone service to the widest practicable number of users of telephone service;

(b) make ~~loans to persons~~ a loan to a person to whom telephone service is or will be supplied by the cooperative for the purpose of and otherwise to assist ~~those persons~~ that person in wiring ~~their~~ the person's premises for telephone service and installing in ~~their~~ the person's premises telephone fixtures, appliances, apparatus, and equipment of all kinds and character and, in connection with telephone fixtures, purchase, acquire, lease, sell, distribute, install, and repair the telephone fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other ~~evidences of indebtedness~~ debt and all types of security for telephone fixtures;

(14) ~~do and~~ perform all other acts ~~and things and have~~ and exercise all other powers that may be necessary, ~~convenient, or appropriate~~ to accomplish the purpose for which the cooperative is organized or authorized under federal law."

NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 69, chapter 3, part 1, and the provisions of Title 69, chapter 3, part 1, apply to [section 1].

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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